

APR 23 2002

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 5147  
DATE COMPLAINT FILED: 11/06/00  
DATES OF NOTIFICATION: 11/13/00  
and 12/13/00  
DATE ACTIVATED: 08/23/01

EXPIRATION OF STATUTE OF  
LIMITATIONS: 10/19/05

**COMPLAINANT:**

Elaine W. Marks, Chairwoman  
Spartanburg County Democratic Party

**RESPONDENTS:**

Spartanburg County Republican Party<sup>1</sup>  
Richard S. Beltram  
Intedge Industries, Inc.  
Entercom Greenville, LLC and Entercom  
Greenville License, LLC

**RELEVANT STATUTES:**

2 U.S.C. § 431(9)(A)(i)  
2 U.S.C. § 431(17)  
2 U.S.C. § 431(18)  
2 U.S.C. § 434(c)  
2 U.S.C. § 441b(a)  
2 U.S.C. § 441d  
2 U.S.C. § 441d(a)(3)  
11 C.F.R. § 100.22  
11 C.F.R. § 114.4(d)

**INTERNAL REPORTS CHECKED:**

None

**FEDERAL AGENCIES CHECKED:**

None

<sup>1</sup> Because the Spartanburg County Republican Party is not registered with the Commission or with the South Carolina State Ethics Commission as a political committee, this Office has been unable to confirm the existence of, or to identify, any treasurer of this organization. If the Commission accepts this Office's no-reason-to-believe recommendation regarding this organization, the lack of a treasurer respondent will have no consequence.

**I. GENERATION OF MATTER**

This matter was initiated by a complaint filed on November 6, 2000, by Elaine W. Marks, Chairwoman of the Spartanburg County Democratic Party ("Complainant").<sup>2</sup> Complainant alleges that Richard S. Beltram, the chairman of the Spartanburg County Republican Party ("SCRП"), and Intedge Industries, Inc. ("Intedge"), his business, purchased and ran a political advertisement without a disclaimer on radio stations WORD/WYRD and WSPA-AM prior to the 2000 general election. Entercom Greenville, LLC and Entercom Greenville License, LLC (collectively "Entercom") own and operate these radio stations.

Mr. Beltram, the SCRП, and Intedge were notified of the complaint on November 13, 2000. Entercom was notified of the complaint on December 13, 2000. Mr. Beltram, the SCRП, and Intedge all responded through Mr. Beltram by facsimile dated November 22, 2000. Entercom responded, through counsel, by letter dated January 16, 2001.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. The Law**

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines an "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). The Act defines "person" as "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons . . . ." 2 U.S.C. § 431(11).

Section 441b(a) prohibits any corporation, in general, from making an "expenditure in connection with any election" for federal office and prohibits any officer or director of any

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<sup>2</sup> Spartanburg County is located in South Carolina.

corporation to consent to any expenditure by the corporation.<sup>3</sup> As has been noted on numerous occasions, one of the primary purposes of section 441b(a) and its statutory predecessor, 18 U.S.C. § 610, is to prohibit the "use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 247 (1986) (quoting *United States v. International Union United Auto.*, 352 U.S. 567, 589 (1957)) and Advisory Opinions 1980-128 and 1980-20; see 11 C.F.R. § 114.2.<sup>4</sup>

An independent expenditure is "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17). The Act requires reports of independent expenditures made by any person (other than a political committee) if the amount of independent expenditures exceeds \$250 in a calendar year. See 2 U.S.C. § 434(c).

Pursuant to 11 C.F.R. § 100.22,

*Expressly advocating* means any communication that –

(a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of

<sup>3</sup> Qualified nonprofit corporations may make independent expenditures. See 11 C.F.R. § 114.10.

<sup>4</sup> A corporation may make voter registration and get-out-the-vote communications to the general public only if the communications do not expressly advocate "the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party" and are not coordinated with any candidate or political party. 11 C.F.R. § 114.4(d)(1) and (2).

campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!"; or

(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because-

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.<sup>5</sup>

Express advocacy encompasses discussions that "expressly advocate a particular election result."

*Buckley v. Valeo*, 424 U.S. 1, 80 (1976). The term "clearly identified" means, *inter alia*, that "the identity of the candidate is apparent by unambiguous reference." 2 U.S.C. § 431(18).

Whenever any person makes an expenditure to finance communications expressly advocating the election or defeat of a clearly identified candidate through any "broadcasting station" or "any other type of general public political advertising" the communication must include a disclaimer. 2 U.S.C. § 441d. If a candidate or an authorized political committee of a candidate does not authorize the communication, the disclaimer must clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

<sup>5</sup> Two appellate courts have determined that part (b) of this regulation is invalid. *Maine Right to Life v. FEC*, 98 F.3d 1 (1<sup>st</sup> Cir. 1996) and *FEC v. Virginia Society for Human Life, Inc.*, 263 F.3d 379 (4<sup>th</sup> Cir. 2001) ("VSHL") (in which the court of appeals affirmed the district court's decision that section 100.22(b) was unconstitutional, but vacated the district court's injunction which prohibited the Commission from seeking to enforce section 100.22(b) against any party in the United States; the court of appeals remanded that part of the case for a modification of the injunction to apply to VSHL only). The Commission recently has petitioned the Fourth Circuit for rehearing, and rehearing *en banc* in *VHSL*, on the issue of the constitutionality of 11 C.F.R. § 100.22(b). That petition has been denied.

**B. The Complaint**

The complaint alleged that "the chairman of the Spartanburg County Republican Party [Mr. Beltram] has been running an ad that does not include a disclaimer." The complaint included a transcript of the advertisement in question, which reads as follows:

Hello, upstate voters. I have a very important message for you today. My name is Rick Beltram, and I'm the chairman of the Republican Party in Spartanburg County. As you know, in just a few days from now, we'll have a very important election November 7, year 2000. You've heard the debates, the issues are on the table and I'm sure you'll agree with me that the Republican candidates are those that have the right issues and the likeability to not only be elected but get the job done whether it is in Washington or in Columbia. As you know, on the ballot, along with President, we have numerous other candidates running for Senate and State House and I encourage you today to please vote the straight line Republican ticket as these folks have not only earned the right to be there but can properly represent you when they have the tough decisions to make at their respective levels. Again, thank you very much for your attention and we look for you to vote positive for the Republican Party on November 7<sup>th</sup> 2000.

Complainant stated that after the "radio station was contacted and questioned about" the advertisement, it replied that the advertisement "was an 'opinion' ad and not a 'political' ad and therefore did not require a disclaimer." Complainant further stated that when the radio station was asked who paid for the advertisement "the reply was 'Intedge Industries,' the chairman's business." The complaint alleged that the radio station believed Intedge Industries was incorporated. The complaint also alleged that the advertisement subsequently "had been altered to include a disclaimer that it was paid for by Intedge Industries." Complainant provided a facsimile from Mark Kravetz, General Sales Manager of WORD 1330, one of the stations running the advertisement. The relevant text of the facsimile reads as follows:

Please find below the information you requested in response to your inquiry concerning the ad that was aired on WORD/WYRD and WSPA-AM by Intedge Industries.

The copy in question aired on WORD/WYRD once per day, Tue – Thu. 7AM – 10AM, between 10/19/00 and 10/26/00, for a total of 4 airings.

1 The copy in question aired on WSPA-AM once per day, Fridays,  
2 3PM – 6PM, between 10/18/00 and 10/26/00, for a total of 1 airing.

3 The client, Intedge Industries did not receive a political rate, as this ad  
4 did not meet the requirements for political rates.

5 There was no intent on the part of Entercom of Greenville, WORD/WYRD,  
6 WSPA-AM, or any of its employees to do anything contrary to legal requirements.

7  
8 Complainant stated that “1) corporations are not allowed to contribute to federal  
9 campaigns, and 2) political ads should include a disclaimer.” The complaint implied that the  
10 regulation at 11 C.F.R. §114.4(d) prohibited Intedge from purchasing the advertisement at issue.<sup>6</sup>  
11 The complaint concluded by stating “we want the public to be aware of who is paying for the  
12 advertising that is designed to sway an election for one person or group over another.”

13 **C. The Responses**

14 **1. Mr. Beltram, the SCRP, and Intedge**

15 By facsimile dated November 22, 2000, Mr. Beltram, on behalf of himself, the SCRP,  
16 and Intedge, submitted a response to Complainant's allegations, although he stated that “[i]t  
17 would appear that the motivation [behind the complaint] is merely to harass me as an  
18 individual.”<sup>7</sup> Mr. Beltram stated, “In my opinion; [sic] since this was only a personnel [sic]  
19 opinion ad no disclaimer was required.” He continued to say, “As an individual, I chose to  
20 express my opinion on the radio in a total of 5 airings with a total cost of approximately  
21 \$225.00.” He stated that the radio station “clearly heard my message and recorded it thus so as  
22 per the transcript provided to you!!” He further stated, “They booked the ad as a business ad  
23 without the benefit of political rates or with a disclaimer as they felt it was a business ad! They  
24 advised me that the ad did not meet the requirements of a political ad.” He claimed that he

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<sup>6</sup> See footnote 4, *supra*.

<sup>7</sup> Mr. Beltram noted that he reviewed the complaint sent to his home (as an individual), his work address (as SCRP Chairman), and his corporate attorney (as Intedge). He stated that he wished “to respond as my opportunity to demonstrate that no action be taken against all parties that were served and that this complaint be closed!”

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1 "followed the advice of the radio station!!" Regarding the tag line later added to the  
2 advertisement, he stated that the wife of a Democrat candidate "called the radio station and spoke  
3 very stern words to them, so they pacified her by adding the disclaimer!!" He continued, "If the  
4 radio station had advised me that a disclaimer was required, I would certainly have added it!" In  
5 closing, Mr. Beltram stated, "I feel that I did nothing incorrect and simply followed the  
6 guidelines as the radio station had advised me for this type of ad!!" He asked that the  
7 Commission "dismiss this complaint for all parties!!"

8 **2. Entercom**

9 By letter dated January 16, 2001, Entercom, through counsel, submitted a response to  
10 Complainant's allegations. In its response, Entercom stated that its "role in the matters which lie  
11 at the heart of this complaint has been extremely limited." According to Entercom, "The text of  
12 the announcement was read by and prepared at the direction of the advertiser, and no employee  
13 of Entercom's stations had any responsibility for or made any changes regarding the text of the  
14 announcement." Entercom continued, "The announcement was broadcast on the stations in  
15 accordance with the schedule requested by the advertiser." Regarding the later addition of the  
16 tag line that Intedge paid for the advertisement, Entercom stated, "When a question was received  
17 by the stations about the sponsor of the advertisement, the General Sales Manager of the stations  
18 reviewed the announcement and promptly added a tag line at the end of the announcement to  
19 identify the sponsor as Intedge Industries, which was billed for the time." Entercom claimed that  
20 "questions regarding the compliance of a particular advertiser with federal election campaign  
21 laws are matters that are the direct responsibility of the candidates or party representatives  
22 placing the ads . . . ." Entercom further stated that "stations are dependent upon the compliance  
23 activities of the advertisers and cannot – nor should they be required to – undertake an

1 independent investigation regarding potential compliance questions.” According to Entercom,  
2 the fact “the stations added a tag line to identify the sponsor of the advertisement does not alter  
3 this principle nor does it properly implicate Entercom in FEC compliance matters.” In closing,  
4 Entercom stated that it “acted reasonably and in accord with its responsibilities in this matter and  
5 that the Federal Election Commission should undertake no further action concerning Entercom  
6 or the stations with respect to this complaint.”

7 **D. Analysis**

8 By encouraging “upstate voters” to “vote the straight line Republican ticket” and to “vote  
9 positive for the Republican Party on November 7<sup>th</sup> 2000,” as well as by referring to “get[ing] the  
10 job done . . . in Washington,” the radio advertisement is designed to influence voting in elections  
11 for federal office. *See* Advisory Opinion 1986-38. For this reason, the proposed activity falls  
12 within the “purpose of influencing” standard set forth at 2 U.S.C. § 431(9)(A)(i). Therefore,  
13 payment for the activity is an “expenditure” under the Act. *Cf.* Advisory Opinion 1998-9 (stating  
14 that disbursements for express advocacy by a state party committee were either coordinated  
15 expenditures with the candidate or independent expenditures).

16 Moreover, the advertisement contains express advocacy. The advertisement  
17 unambiguously refers to the Republican candidate for President, clearly identifying the candidate  
18 for the purpose of 2 U.S.C. § 431(17). *See* 2 U.S.C. § 431(18). This language expressly  
19 advocates the election of the Republican candidate for President. 11 C.F.R. § 100.22(a). The  
20 advertisement uses language similar to phrases such as “vote for the President,” “re-elect your  
21 Congressman,” “support the Democratic nominee,” and “cast your ballot for the Republican  
22 challenger for U.S. Senate in Georgia,” which do not identify the candidates by name but “in  
23 context can have no other reasonable meaning than to urge the election or defeat of one or more

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1 clearly identified candidate[s.]" *Id.* In the context of the advertisement, which refers to "upstate  
2 voters," the "ballot," the Republican candidate for President, and the date of the election, "vote  
3 the straight line Republican ticket" and "vote positive for the Republican Party on November 7<sup>th</sup>  
4 2000" can have no other meaning than to urge the election of the Republican candidate for  
5 President.<sup>8</sup>

6 Intedge is a corporation.<sup>9</sup> The complaint and response of Entercom present information  
7 that Intedge paid for the radio advertisement and that Intedge was Mr. Beltram's "business."  
8 Mr. Beltram's response does not address the question of who paid for the advertisement and does  
9 not challenge the description of Intedge as his business. Although Mr. Beltram says he was  
10 expressing his own opinion as an individual, it appears that his company paid for the  
11 advertisement. Independent expenditures "must come entirely from funds subject to the  
12 limitations and prohibitions of the Act." Advisory Opinion 1998-9. Therefore, the payment for  
13 the advertisements was an impermissible corporate expenditure by Intedge, to which Mr.  
14 Beltram consented.<sup>10</sup> Accordingly, the Office of General Counsel recommends that the  
15 Commission find reason to believe that Richard S. Beltram and Intedge Industries, Inc. violated  
16 2 U.S.C. § 441b(a). However, because only \$225 was involved in the violation, this Office  
17 recommends that the Commission take no further action and send an admonishment letter.

18 Since the advertisement contained express advocacy and was disseminated through  
19 broadcasting stations, the advertisement required a disclaimer under 2 U.S.C. § 441d. There is

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<sup>8</sup> The phrase "candidates running for Senate and State House" refers only to state candidates, since there was no United States Senate election in South Carolina during 2000. There were, however, Republican candidates for the United States House of Representatives from districts within range of the broadcast.

<sup>9</sup> The South Carolina Office of the Secretary of State lists Intedge as a New Jersey for-profit corporation. There is no information in hand that Intedge is a qualified nonprofit corporation under 11 C.F.R. § 114.10.

<sup>10</sup> Because the advertisement contained express advocacy, the exception at 11 C.F.R. § 114.4(d) does not apply. See footnote 4, *supra*.

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1 no allegation or information in hand that the advertisement was authorized by a candidate or  
2 authorized candidate committee, so the disclaimer should have clearly stated the name of the  
3 person who paid for the advertisement and stated that the advertisement was not authorized by  
4 any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3). The original advertisement  
5 neither included the name of the person who paid for the advertisement nor whether it was  
6 authorized by a candidate or a candidate's committee. Furthermore, the tag line added by  
7 Entercom identifying the sponsor of the advertisement as Intedge failed to state whether the  
8 advertisement was authorized by a candidate or authorized by a candidate's committee. The  
9 characterization of the advertisement as a "business ad" by Entercom does not affect whether or  
10 not a disclaimer is required. Accordingly, this Office recommends that the Commission find  
11 reason to believe that Intedge Industries, Inc. violated 2 U.S.C. § 441d(a)(3). However, because  
12 it appears that Intedge made an inadvertent error by following the advice of the radio station,  
because the advertisement aired only five times, and because of the small amount of money  
14 involved in the violation, this Office recommends that the Commission take no further action and  
15 send an admonishment letter.

16 The complaint and responses do not support a finding of reason to believe against the  
17 SCRP or Entercom. Mr. Beltram was chairman of the SCRP and mentioned that affiliation in the  
18 advertisement, but he stated he was speaking "as an individual" and Intedge paid for the  
19 advertisement. Although Mr. Beltram's dual roles as an agent of Intedge and as an agent of the  
20 SCRP may raise questions about whether the advertisement was a coordinated expenditure on  
21 behalf of the SCRP, this Office believes that the nominal amount of money involved in this  
22 matter does not justify expending limited Commission resources to investigate whether such  
23 coordination occurred. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1 Entercom's ownership of the radio stations on which the advertisements aired, and its  
2 failure to treat the advertisement as a political advertisement, does not implicate Entercom in any  
3 violation of the Act or regulations. Accordingly, this Office recommends that the Commission  
4 find no reason to believe that the Spartanburg County Republican Party or Entercom Greenville,  
5 LLC and Entercom Greenville License, LLC, violated any provision of the Act or regulations.

6 Consistent with the Commission's treatment of materials to release to the public in MUR  
7 5119 pending the resolution of the appeal in *American Fed'n of Labor and Congress of Indus.*  
8 *Orgs. v. Federal Election Comm'n*, 177 F. Supp.2d 48 (D.D.C. 2001), *appeal docketed*, No. 02-  
9 5069 (D.C. Cir. Feb. 28, 2002), this Office intends to provide the complainant, the respondents,  
10 and the public with copies of only the certification of the Commission's vote and this General  
11 Counsel's Report.

12 **III. RECOMMENDATIONS**

- 13 1. Find reason to believe that Richard S. Beltram violated 2 U.S.C. § 441b(a), but take  
14 no further action, and send an admonishment letter.
  - 15 2. Find reason to believe that Intedge Industries, Inc. violated 2 U.S.C. §§ 441b(a) and  
16 441d(a)(3), but take no further action, and send an admonishment letter.
  - 17 3. Find no reason to believe that the Spartanburg County Republican Party violated any  
18 provision of the Federal Election Campaign Act of 1971, as amended, or Commission  
19 regulations in connection with this matter.
  - 20 4. Find no reason to believe that Entercom Greenville, LLC and Entercom Greenville  
21 License, LLC violated any provision of the Federal Election Campaign Act of 1971,  
22 as amended, or Commission regulations in connection with this matter.
  - 23 5. Approve the appropriate letters.
- 24  
25  
26  
27

6. Close the file.

Lawrence H. Norton  
General Counsel

4/22/02  
Date

BY: Rhonda J. Vosding  
Rhonda J. Vosding  
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Susan L. Lebeaux  
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**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MEMORANDUM**

**TO:** Office of the Commission Secretary  
**FROM:** Office of General Counsel **TRF**  
**DATE:** April 23, 2002  
**SUBJECT:** MUR 5147 – First General Counsel's Report

The attached is submitted as an Agenda document for the  
Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

**CIRCULATIONS**

**DISTRIBUTION**

**SENSITIVE**  
**NON-SENSITIVE**

☒  
☐

**COMPLIANCE**

☒

72 Hour TALLY VOTE ☒  
24 Hour TALLY VOTE ☐  
24 Hour NO OBJECTION ☐  
INFORMATION ☐  
96 Hour TALLY VOTE ☐

Open/Closed Letters ☐  
MUR ☐  
DSP ☐  
STATUS SHEETS ☐  
Enforcement ☐  
Litigation ☐  
PFESP ☐  
RATING SHEETS ☐  
AUDIT MATTERS ☐  
LITIGATION ☐  
ADVISORY OPINIONS ☐  
REGULATIONS ☐  
OTHER ☐

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